

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Freddie Cheatham,)	Case No. 0:19-cv-02772-SAL
)	
Plaintiff,)	
)	
v.)	OPINION & ORDER
)	
Dr. Rozanna Tross)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the December 30, 2019 Report and Recommendation (“Report”) of Magistrate Judge Paige Gossett, ECF No. 13, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (D.S.C.). In the Report, the Magistrate Judge recommended that this action be dismissed without prejudice and without issuance and service of process. The Magistrate Judge reasoned that Plaintiff’s claims against Defendant in her official capacity were, in substance, claims against Defendant’s principal, the South Carolina Department of Mental Health. The Report therefore concluded that such claims are barred under the Eleventh Amendment. In addition, the Report notes that the injunctive relief Plaintiff requests—release from custody—is not an available remedy in this § 1983 suit, and that the State is otherwise immune from Plaintiff’s remaining state tort claims. Accordingly, the Report recommends that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii). Alternatively, the Report recommends that this action be dismissed under Fed. R. Civ. P. 41, because Plaintiff has failed to answer interrogatories in accordance with Local Civil Rule 26.01 (D.S.C.), despite the Magistrate Judge’s November 13, 2019 Order to do so.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this

Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the Court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the Court finds no clear error, adopts the Report, and incorporates the Report by reference herein. Accordingly, this case is **DISMISSED** without prejudice and without issuance and service of process.

IT IS SO ORDERED.

January 27, 2020
Florence, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge